IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 9TH AUGUST 2007 / 18TH SRAVANA 1929

Bail Appl..No. 4826 of 2007()

CRIME NO.130/2003 ON THE FILES OF THOPPUMPADY POLICE STATION, KOCHi

: PETITIONER/ACCUSED 1 TO 3

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1. PANKAJ BAHIMAN BHATT,
   M.S.JAJAYARAM GARMENTS, AVITEH INDUSTRIAL CENTRE,
   KAMIS ROAD, GOPESWARAM, MUMBAI-60.

2. BHARAT BAHIMAN BHATT,
   M.S.JAJAYARAM GARMENTS, AVITEH INDUSTRIAL CENTRE,
   KAMIS ROAD, GOPESWARAM, MUMBAI-60.

3. BADRAKUMAR,
   GARDENVILLAS, MUTTAKKAD POST, ATTINGAL,
   KOLLAM DISTRICT.

BY ADV. SRI.M.H.HANIL KUMAR

RESPONDENTS: COMPLAINANT/STATE

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1. SUB INSPECTOR OF POLICE,
   THOPPUMPADY POLICE STATION, ERNAKULAM DISTRICT,
   REPRESENTED BY THE PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA, ERNAKULAM, COCHIN-682 031.

2. STATE OF KERALA, REPRESENTED BY
   THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
   ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 09/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

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B.A. No.4826 Of 2007

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Dated this the 9th day of August, 2007

ORDER

Petitioners face allegations for offence punishable inter alia under Sec.448 read with 34 IPC. All offences are bailable but as the final report shows the petitioners are absconding the learned Magistrate has issued non bailable warrant at the first instance under section 204 Cr.P.C.

2. According to the petitioners they are absolutely innocent. They were never absconding. The mere fact that the Investigating Officer has shown that the petitioners are absconding, the learned Magistrate should not have chosen to issue non bailable warrant under Sec.204 Cr.P.C. at the first instance. The petitioners are willing to appear before the learned Magistrate and seek regular bail, but the petitioners apprehend that their application for regular bail may not be considered by the learned Magistrate on merits in accordance with law and expeditiously. The petitioner prays that directions under Section 438 may be issued in his favour. In these circumstances, appropriate directions may be issued under section 438 Cr.P.C, prays the learned counsel for the petitioner.

3. After the decision in **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C 4662], it is trite that powers under Section 438 Cr.P.C

can be invoked in favour of a person who apprehends arrest in execution of a non bailable warrant issued by a court after taking cognizance . I am satisfied that directions under section 438 Cr.P.C can be issued.

4. In the result, this petition is allowed.

i) Warrant of arrest issued against the petitioners shall not be executed till on 16.8.07.

ii) They shall appear before the learned Magistrate at 11 a.m. on 16.08.07 they shall be released on regular bail on condition that they execute bonds for Rs.25,000/-(Rupees twenty five thousand only) each with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

(iii) If the petitioners do not appear before the learned Magistrate as directed in clause (i), directions issued above shall thereafter stand revoked and the police shall be at liberty to arrest the petitioners and deal with them in accordance with law, as if these directions were not issued at all.

(v) If they were arrested prior to 16/8/2007, they shall be released on bail on their executing a bond for Rs.25,000/- (Rupees twenty five thousand only) without any sureties, undertaking to appear before the learned Magistrate on 16.08.07.

(R.BASANT, JUDGE)

sj